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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BART LYONS,

Plaintiff,

No. CIV S-09-1682 DAD P

vs.

D. HURD, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner confined at the Sierra Conservation Center proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has filed an application to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to the undersigned magistrate judge in accordance with Local Rule 72-302 and 28 U.S.C. § 636(b)(1).

SCREENING REQUIREMENT

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1) & (2).

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
3 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 Rule 8(a)(2) of the Federal Rules of Civil Procedure “requires only ‘a short and
9 plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the
10 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell Atlantic
11 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
12 (1957)). However, in order to survive dismissal for failure to state a claim a complaint must
13 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain
14 factual allegations sufficient “to raise a right to relief above the speculative level.” Bell Atlantic,
15 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the
16 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.
17 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all
18 doubts in the plaintiff’s favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

19 The Civil Rights Act under which this action was filed provides as follows:

20 Every person who, under color of [state law] . . . subjects, or causes
21 to be subjected, any citizen of the United States . . . to the
22 deprivation of any rights, privileges, or immunities secured by the
23 Constitution . . . shall be liable to the party injured in an action at
24 law, suit in equity, or other proper proceeding for redress.

25 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
26 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
(1976). “A person ‘subjects’ another to the deprivation of a constitutional right, within the

1 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
2 omits to perform an act which he is legally required to do that causes the deprivation of which
3 complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

4 Moreover, supervisory personnel are generally not liable under § 1983 for the
5 actions of their employees under a theory of respondeat superior and, therefore, when a named
6 defendant holds a supervisory position, the causal link between him and the claimed
7 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
8 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory
9 allegations concerning the involvement of official personnel in civil rights violations are not
10 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

11 **PLAINTIFF’S COMPLAINT**

12 In the present case, plaintiff has identified as the defendants D. Hurd, T.G.
13 Shields, and Matthew Cate. Plaintiff alleges that defendant Hurd violated his constitutional
14 rights when he called him a “junky” at his parole revocation hearing. Plaintiff further alleges that
15 defendant Hurd improperly found him guilty of driving under the influence and unfairly deemed
16 him ineligible to earn credits. Plaintiff also alleges that defendant Hurd affirmed plaintiff’s
17 parole conditions prohibiting him from residing with his wife and requiring him to pursue
18 medical treatment. Finally, plaintiff alleges that defendant Shields falsified a report and offered
19 false testimony against plaintiff regarding his driver’s license status and that defendant Cate “has
20 lobbied and won legislation making CDCR and CHP immune.” Plaintiff requests an immediate
21 discharge from parole as well as monetary compensation. He also requests that the court allow
22 him to live with his wife. (Compl. at 5.)

23 **ANALYSIS**

24 A civil rights action is the proper mechanism for a prisoner seeking to challenge
25 the conditions of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991). In contrast,
26 habeas corpus proceedings are the proper mechanism for a prisoner seeking to challenge the fact

1 or duration of his confinement. Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). Here, plaintiff
2 is seeking to overturn his parole revocation and to be immediately discharged from parole.
3 Accordingly, a writ of habeas corpus is plaintiff's sole remedy in federal court which may be
4 pursued only after exhausting all of his constitutional claims in state court. See, e.g., Wilkinson
5 v. Dotson, 544 U.S. 74, 81-82 (2005) ("a state prisoner's § 1983 action is barred (absent prior
6 invalidation) - no matter the relief sought (damages or equitable relief), no matter the target of
7 the prisoner's suit (state conduct leading to conviction or internal prison proceedings) - *if* success
8 in that action would necessarily demonstrate the invalidity of confinement or its duration.")
9 (emphasis in original); Heck v. Humphrey, 512 U.S. 477, 486-87 (1994) (a state prisoner may not
10 recover damages under § 1983 for allegedly unconstitutional imprisonment, or for any other
11 harm caused by "actions whose unlawfulness would render the imprisonment invalid," unless he
12 can prove that the conviction or other basis for confinement has been reversed on direct appeal,
13 expunged by executive order, declared invalid by a state tribunal authorized to make such a
14 determination, or called into question by a federal court's issuance of a writ of habeas corpus).¹

15 CONCLUSION

16 IT IS HEREBY ORDERED that the Clerk of the Court is directed to randomly
17 assign a United States District Judge to this action.

18 IT IS HEREBY RECOMMENDED that:

- 19 1. Plaintiff's June 17, 2009 motion to proceed in forma pauperis (Doc. No. 2) be
20 denied; and
21 2. This action be dismissed without prejudice.

22
23 ¹ Plaintiff has attached to his complaint an order from the Sacramento County Superior
24 Court denying his petition for writ of habeas corpus challenging his parole revocation. As noted
25 above, before plaintiff may seek habeas corpus relief in federal court he must satisfy the
26 exhaustion requirement. He may do so by providing the highest state court, and not simply the
Superior Court, with a full and fair opportunity to consider all claims before presenting them to
the federal court. See Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d
1083, 1086 (9th Cir. 1986).

1 These findings and recommendations are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
3 days after being served with these findings and recommendations, plaintiff may file written
4 objections with the court. The document should be captioned "Objections to Magistrate Judge's
5 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
6 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
7 F.2d 1153 (9th Cir. 1991).

8 DATED: September 3, 2009.

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11 _____
12 DALE A. DROZD
13 UNITED STATES MAGISTRATE JUDGE

12 DAD:9
13 lyon1682.56